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May 17, 2006

General Michael V. Hayden
Principal Deputy Director of National Intelligence
Office of the Director of National Intelligence
Washington, D.C. 20511

Dear General Hayden:

Congratulations on your nomination to be Director of the Central Intelligence Agency (CIA). I appreciated your call to let me know of the President's decision and I look forward to further discussions as the confirmation process moves forward.

Unfortunately, my recent back surgery will prevent me from attending the confirmation hearing scheduled for May 18th. I will, however, submit questions for the record. I also will review closely the transcripts of both the open and closed hearings as soon as they are available and prior to the Committee vote.

I am certain that your statement at the hearing will be thorough in describing your vision for the CIA. But let me mention several important issues I hope you will address in your testimony.

Preeminent among my concerns is the question of independence. I believe that over the past few years the U.S. Intelligence Community has been under intense political pressure to bring its analytic judgments and statements into conformance with Administration policies. This politicization has damaged the credibility of the Intelligence Community and undermined America's efforts to deal with critical national security challenges. The damage can only be repaired by leadership that is above reproach.

The need to avoid even the appearance of political influence is why I was so concerned about your actions in the wake of the President's acknowledgment of the National Security Agency's warrantless surveillance program. While it is understandable that you would be called upon to answer factual questions about the program, your multiple press appearances were part of a coordinated White House press strategy to defend the program and the policy to conduct the surveillance outside the legal requirements of the Foreign Intelligence Surveillance Act. Moreover, you were aggressively promoting the alleged benefits of the program to the public at a time when basic information about the program, including its existence, was being withheld from the full membership of the congressional intelligence oversight committees.

I wrote to Director Negroponte in February and expressed my belief that your participation was inappropriate and ill-advised. It is of the utmost importance that officials of the Intelligence Community avoid even the appearance of politicization, and that its senior leaders set an example. I hope that you will use your statement to explain your actions in this case and discuss the broader issue of the independence of the CIA.

In addition, I am interested in your view of the Administration's decision, suddenly reversed yesterday, not to fully inform all intelligence committee members about this NSA warrantless surveillance program, as well as its detention, interrogation and rendition programs. I believe this policy has not been consistent with the notification requirements of the National Security Act.

There is only one circumstance, covert actions, where the Congress has agreed to allow notifications to only a limited group of members. In all other areas of intelligence notifications, the President is bound to fully inform the congressional intelligence committees. He may request that the committees limit the distribution of non-covert action information, but it is clear the Congress has the express constitutional authority to make its own determinations about how to conduct its affairs. This principle also is embodied in Section 501(d) of the National Security Act of 1947 which states that the House and Senate shall each establish procedures for protecting classified information in its possession.

I think you will agree our intelligence programs are stronger and less likely to become lightning rods for controversy when the Congress is fully on board as a partner from the beginning. Ill-advised attempts to shield programs from oversight inevitably will lead to suspicion and a loss of credibility for the Intelligence Community and the Congress. Our mutual goal should be to ensure that critical intelligence programs receive the attention and support they need to be effective. I hope you will assure the Committee at your confirmation hearing that you will be responsive to the legitimate oversight needs of the Congress and that you will comply with the legal obligations the Director of the CIA is under to keep all committee members fully informed of the Agency's intelligence activities.

Another way the intelligence process has been politicized in recent years has been the troubling and at times blatant leaking and selective declassification of intelligence information to support particular policy goals. As you well know, the disclosure of classified information does serious damage to our intelligence programs and undermines our national security. This issue gets significant attention but is often mischaracterized. Most disclosures of intelligence information, in my view, are generated by Executive Branch officials pushing a particular policy, and not by the rank-and-file employees of the intelligence agencies. We now know that the President himself is alleged to have authorized the release of classified intelligence information in order to defend his Iraq policy.

I encourage you to address the issue of how information is leaked or selectively declassified to further policy goals or, in the case of CIA employee Valerie Plame, as retribution. I also would like to hear your thoughts as to what obligation the CIA Director is under to correct public statements by government officials on intelligence matters that misrepresent intelligence judgments or that are contradicted by the underlying intelligence.

An area where I think your experience, both as a senior military officer and in your current position, will serve you well is in managing the increasingly complex relationship between the CIA and the Department of Defense. As we face a long term struggle against the international jihadist movement, all of our intelligence agencies will need to continue to expand collection activities. There is an appropriate role for the Department of Defense in human intelligence collection but the CIA through the National Clandestine Service (NCS) must be the lead agency providing overall

management and coordination of intelligence collection activities overseas. I know this was the intent of Director Negroponte when he established the NCS and I will be interested to hear your thoughts on how to make this structure work.

In addition to your plan for fully implementing the authority of the NCS, it will be important for you to lay out a vision for improving the morale of CIA employees, stopping the exodus of talented officers and setting a clear direction for the Agency. I was encouraged by Director Negroponte's mention of the possible return of Mr. Steve Kappes. Such a move would send a signal that you value serious experienced intelligence professionals, rather than individuals willing to toe the political line or succumb to inappropriate pressure.

I know that some have raised the question of your continued military service. The only concern I have in this regard is clarifying the legal situation regarding the chain of command. The CIA is a civilian agency and the Director is answerable to the Director of National Intelligence (DNI) and the President, not the Secretary of Defense. I know that you understand this and will act appropriately. This principle of civilian control of the CIA has been of such concern that until recently the statute governing the CIA included a provision clarifying that a military officer serving as Director, or Deputy, was not subject to supervision by the Secretary of Defense or any other officer of the Defense Department. The Intelligence Reform and Terrorism Prevention Act of 2004 applied that section of the law to the newly-created DNI and Principal Deputy DNI but omitted it from the section dealing with the CIA Director.

I believe this omission was unintended and needs to be corrected. The fiscal year 2006 intelligence authorization bill, approved by the Senate Intelligence Committee in September of last year and still awaiting Senate action, included a provision that would have directed that the CIA Director and Deputy be appointed from civilian life. This provision recognized the value of military experience and would have allowed a recently retired officer to hold these positions, but not an individual serving on active duty. The rationale behind this provision and the one that previously applied is the need to make clear that the clandestine collection operations and the independent all-source analytic capability are free from the influence and institutional bias of other elements of the U.S. government.

I believe this is an important principle to uphold, no matter which individual occupies the position of Director. I hope you will address the chain of command issue in your testimony. Regardless of your decision on your military status, I will seek to ensure that legislation clarifying the chain of command issue is passed as soon as possible.

Finally, I want to raise with you my concern that the CIA, and the Intelligence Community as a whole, needs to be better positioned in its judgments concerning Iran. As you know, our committee's July 2004 review of Iraq intelligence exposed some glaring problems in the collection and analysis of intelligence information prior to the war. The Committee will need to hear from you on the question of whether the Intelligence Community has learned from these painful lessons and embraced the reforms necessary to deal with the challenges relating to Iran and other hard-target nations.

Sincerely,



John D. Rockefeller IV
Vice Chairman